

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMANCIO ORTEGA, on behalf of himself
and other similarly situated,

Plaintiff,

13 CV 1034(CBD)

- v. -

ANSWER

250 EAST 58th STREET FOOD CORP. d/b/a
MOONSTRUCK DINER, 449 RESTAURANT, INC.,
d/b/a MOONSTRUCK EAST, 400 WEST 23rd
STREET RESTAURANT CORP. d/b/a
MOONSTUCK DINER, 88 2ND AVE. FOOD CORP.
d/b/a MOONSTRUCK ON 2ND, and JOHN KAPETANOS,

Defendants.

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1. Defendants, by their attorney, Arthur H. Forman, as and for their answer to the Complaint of the plaintiff, allege and state:

JURISDICTION AND VENUE

2. Deny the allegations set forth in paragraph "2" of the Complaint, except admit that the jurisdiction of this court is purportedly invoked as set forth therein.

3. Deny the allegations set forth in paragraph "3" of the Complaint, except admit that the venue of this court is purportedly invoked as set forth therein.

PARTIES

4. Admit the allegations set forth in paragraph "4" of the Complaint.

5. Deny each and every allegation set forth in paragraph "5" of the Complaint.

6. Admit the allegations set forth in paragraph "6" of the Complaint.

7. Admit the allegations set forth in paragraph "7" of the Complaint.

8. Admit the allegations set forth in paragraph "8" of the Complaint.

9. Admit the allegations set forth in paragraph "9" of the Complaint.

10. Deny each and every allegation set forth in paragraph “10” of the Complaint.

11. Admit so much of the allegations set forth in paragraph “11” of the Complaint as allege that plaintiff worked at the 58th Street location from a date prior to February 14, 2007 until approximately February 2013, and deny the rest of the allegations set forth in said paragraph.

FLSA COLLECTIVE ALLEGATIONS

12. Deny the allegations set forth in paragraph “12” of the Complaint, except admit that plaintiff purports to proceed against defendants as set forth therein.

13. Deny the allegations set forth in paragraph “13” of the Complaint.

14. Deny the allegations set forth in paragraph “14” of the Complaint, and respectfully refer all questions of statutory construction to the court for determination.

RULE 23 – NEW YORK CLASS ALLEGATIONS

15. Deny the allegations set forth in paragraph “15” of the Complaint, except admit that plaintiff purports to proceed against defendants as set forth therein.

16. Deny the allegations set forth in paragraph “16” of the Complaint.

17. Deny the allegations set forth in paragraph “17” of the Complaint.

18. Deny the allegations set forth in paragraph “18” of the Complaint.

19. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph “19” of the Complaint, and leave plaintiff to his proof thereof.

20. Deny the allegations set forth in paragraph “20” of the Complaint.

21. Deny that the allegations set forth in paragraph “21” of the Complaint assert a statement of fact the truth of which defendant can admit or deny, but insofar as plaintiff alleges statements of fact, defendants deny each and every such allegation.

22. Deny that the allegations set forth in paragraph "22" of the Complaint assert a statement of fact the truth of which defendant can admit or deny, but insofar as plaintiff alleges statements of fact, defendants deny each and every such allegation.

FACTS

23. Deny that they possess information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph "23" of the Complaint, except admit that a purported Consent to Sue form is attached to plaintiff's complaint as Exhibit "A".

24. Deny the allegations set forth in paragraph "24" of the Complaint

25. Deny the allegations set forth in paragraph "25" of the Complaint

26. Deny the allegations set forth in paragraph "26" of the Complaint.

27. Deny the allegations set forth in paragraph "27" of the Complaint.

28. Deny the allegations set forth in paragraph "28" of the Complaint.

29. Deny the allegations set forth in paragraph "29" of the Complaint.

30. Deny the allegations set forth in paragraph "30" of the Complaint.

31. Deny the allegations set forth in paragraph "31" of the Complaint.

32. Deny the allegations set forth in paragraph "32" of the Complaint.

33. Deny the allegations set forth in paragraph "33" of the Complaint.

34. Deny the allegations set forth in paragraph "34" of the Complaint.

35. Deny the allegations set forth in paragraph "35" of the Complaint.

FIRST CLAIM FOR RELIEF

36. Defendants reiterate and reallege each and every answer contained in paragraph "1" through "35".

37. Deny the allegations set forth in paragraph "37" of the Complaint, except admit that plaintiff usually worked in excess of 40 hours per week.

38. Deny the allegations set forth in paragraph "38" of the Complaint.

39. Deny the allegations set forth in paragraph "39" of the Complaint.

40. Deny the allegations set forth in paragraph “40” of the Complaint, except admit that plaintiff purports to proceed as stated therein.

SECOND CLAIM FOR RELIEF

41. Defendants reiterate and reallege each and every answer contained in paragraph “1” through “40”.

42. Deny the allegations set forth in paragraph “42” of the Complaint and respectfully refer all questions of statutory construction to the court for determination.

43. Deny the allegations set forth in paragraph “43” of the Complaint.

44. Deny the allegations set forth in paragraph “44” of the Complaint.

THIRD CLAIM FOR RELIEF

45. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs “1” through “44” as if more fully set forth at length herein.

46. Deny the allegations set forth in paragraph “46” of the Complaint.

47. Deny the allegations set forth in paragraph “47” of the Complaint.

48. Deny the allegations set forth in paragraph “48” of the Complaint.

FOURTH CLAIM FOR RELIEF

49. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs “1” through “48” as if more fully set forth at length herein.

50. Deny the allegations set forth in paragraph “50” of the Complaint.

51. Deny the allegations set forth in paragraph “51” of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

52. The Complaint fails to state a claim, in whole or in part, upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

53. Plaintiff’s claims are barred in whole or in part by the applicable statute of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

54. Plaintiff's claims are barred because defendants' acts or omissions were made in good faith in conformity with and in reliance upon administrative rulings, orders and regulations of the federal and state Departments of Labor.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

55. With respect to all causes of action set forth in the Complaint, defendants' acts or omissions were in good faith and defendants had reasonable grounds to believe that such acts were in compliance with applicable law, and therefore, liquidated damages are not appropriate.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

56. Plaintiff's claims are barred in whole or in part because Plaintiff was an exempt employee within the meaning of the applicable statutes for all or a part of the period of time sued for herein.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

57. With respect to all causes of action set forth in the Complaint, plaintiff's claims must be barred because plaintiff was properly compensated for all hours worked.

WHEREFORE, defendants request judgment dismissing the Complaint and denying all relief requested therein, together with the costs of defending this action, including reasonable attorney fees.

Dated: March 25, 2008
Forest Hills, New York

By: /S/
Arthur H. Forman
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DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury on all causes of action and defenses with respect to which they have a right to a jury trial.